

04-25-06

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Before the Board of Patent Appeals and Interferences

In re application of: Harold Cohen
Applications Number: 10/620,207
Filing Date: July 15, 2003
Title: Insect Trap With Insert and Method of Making Same
Examiner: Kurt C. Rowan
Art Unit Group: 3643

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

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Sir:

Enclosed herewith is appellant's Brief on Appeal. The USPTO is hereby authorized to charge Deposit Account No. 08-2442 for any and all appeal fees and extension of time fees associated with this appeal.

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I.

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Statutes

United States Code Section 35 U.S.C. § 102(b)	15, 17, 19-21, 44
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II. The Real Party in Interest.

Global Vector Controls Inc. is the real party in interest.

III. Related appeals and interferences.

There are no related appeals, and there are no related interferences.

IV. Status of the claims.

Claims 1-35 are pending.

Claims 1-10, 24-26 and 31-35 were finally rejected. Appellant hereby appeals the Examiner's final rejection of claims 1-10, 24-26, and 31-35.

Claims 11-23 and claims 27-30 are withdrawn from consideration.

V. Status of Amendments.

An Amendment After Final was filed on September 26, 2005, to correct a minor typographical error in claim 24. The Examiner denied entry of the Amendment After Final.

In particular, the Amendment After Final was submitted to correct independent claim 24, part b, as follows: “a formula, the formula applied on a coated region of the first side leaving the ~~third~~ first portion of the first side noncoated, and the formula applied on a coated region on the second side leaving the third portion of the second side noncoated.”

The Amendment After Final was not entered, even though dependent claim 25, which depends from independent claim 24, recites that the coated region of the first side covers the “middle portion and a coated part of the third portion, and wherein the coated region on the second side covers the middle portion and a coated part of the first portion.” Thus, the Amendment After Final, had it been entered, would have made amended independent claim 24 consistent with what is recited in dependent claim 25.

In addition, dependent claim 4, which depends from independent claim 1, recites essentially the same structure as follows: “the coated region of the first side covers the middle portion to form a coated middle portion and covers a coated part of the third portion and wherein the first portion of the first side is noncoated.” Thus, there are two instances in the claims themselves (claim 4 and claim 25) wherein the typographical error was not present, and wherein the Examiner was faced with the exact claim language set forth in the Amendment After Final.

Nevertheless, in an Advisory Action dated October 11, 2005, paragraph 3, the Examiner denied entry of the Amendment After Final, and indicated that the formula being applied on a coated region of the first side leaving the “first” portion of the first side noncoated was a new issue “that would require further consideration and/or search.” However, that does not reflect the reality of the situation, because the Examiner already considered this exact issue twice, once in dependent claim 4 and once in dependent claim 25.

Accordingly, it does not appear to appellant that entry of the Amendment After Final would have involved a “new issue” as indicated by the Examiner. Rather, entry of the Amendment After Final would have required, at the absolute most, a cursory review by the

Examiner. Thus, appellant respectfully requests that the Board of Patent Appeals and Interferences require the Examiner to enter the Amendment After Final.

VI. Summary Of The Claimed Subject Matter.

Appellant's invention is for an insect control product having an unattached insert coated with an insecticide formula that is introduced into a housing or box.

Independent claim 1 is directed to an insert for an insect control product.

1. An insert (p.6, line 13, 12-FIGS. 2-4, 8) for an insect control product (p. 11, lines 13-14, 10-FIGS. 1 and 8) comprising:
 - a) a first side (p.6, line 15; 13-Fig. 2) and an oppositely facing second side (p. 6, line 15, 15-Fig. 3),
 - b) a first portion (p.6, line 16; 23-FIG. 2),
 - c) a middle portion (p.6, line 17; 25-FIG. 2),
 - d) and a third portion (p.6, line 18; 26-FIG. 2), the middle portion (p.6, line 17; 25-FIG. 2) connected to the first portion (p.6, line 16; 23-FIG. 2) along a fold line (p.6, lines 16-17; 21-FIGS. 2 and 3) and the third portion (p.6, line 18; 26-FIG. 2) connected to the middle portion (p.6, line 17; 25-FIG. 2) along a fold line (p.6, lines 17-19; 21-FIGS. 2 and 3).

Independent claim 24 is directed to the insert coated in a formula and positioned in a box.

24. An insect control product (p. 11, line 14, 10-FIGS. 1 and 8) comprising:
 - a) an insert 12 (p.6, line 13, 12-FIG. 2-4, 7,8) comprising: a first side (p.6, line 15; 13-Fig. 2) and an oppositely facing second side (p. 6, line 15, 15-Fig. 3), a first portion (p.6, line 16; 23-FIG. 2), a middle portion (p.6, line 17; 25-FIG. 2), a third portion (p.6, line 18; 26-FIG. 2), the middle portion (p.6, line 17; 25-FIG. 2) connected to the first portion (p.6, line 16; 23-FIG. 2) and the third portion (p.6, line 18; 26-FIG. 2) along fold lines (p.6, lines 17-19; 21-FIGS. 2 and 3);
 - b) a formula (p. 7, line 12, 300-FIG. 2), the formula (p. 7, line 12, 300-FIG. 2) applied on

a coated region (p. 9, line 4, 19-FIG. 2) of the first side (p.6, line 15; 13-FIG. 2) leaving the third portion (p.6, line 18; 26-FIG. 2) of the first side (p.6, line 15; 13-FIG. 2) noncoated, and the formula (p. 7, line 12, 300-FIG. 2) applied on a coated region (p. 7, lines 20-21, 17-FIG. 3) on the second side (p.6, line 15; 15-FIG. 3) leaving the third portion (p.6, line 18; 26-FIG. 2) of the second side (p.6, line 15; 15-FIG. 3) noncoated;

c) a box (p. 11, line 13, 14-FIG. 8) comprising an interior surface (p. 16, line 25, 104-FIG. 8) and an exterior surface (p. 11, line 24, 102-FIG. 7), the box (p. 11, line 13, 14-FIG. 8) defining a plurality of holes (p. 17, line 25, 128-FIG. 7) for insects to enter the box (p. 11, line 13, 14-FIG. 8); and

d) the insert (p.6, line 13, 12-FIG. 2-4,7,8) folded to comprise a Z-shaped cross section (p. 11, line 30 and continuing onto p. 12, line 1; 12-FIGS. 4 and 8), and the insert (p.6, line 13, 12-FIG. 2-4,7,8) positioned in the box (p. 11, line 13, 14-FIG. 8) such that only the noncoated portion of the first side (p.6, line 15; 13-FIG. 2) and the noncoated portion of the second side (p.6, line 15; 15-FIG. 3) contact the interior surface (p. 16, line 25, 104-FIG. 8) of the box (p. 11, line 13, 14-FIG. 8).

Independent claim 31 is directed to an insert.

31. An insect control product (p. 11, line 14, 10-FIGS. 1 and 8) having a housing (p. 11, line 13, 14-FIG. 8) and an unattached insert (p.6, line 13, 12-FIG. 2-4, 7,8) for introduction into the housing (p. 11, line 13, 14-FIG. 8), the insert (p.6, line 13, 12-FIG. 2-4, 7,8) comprising:

a first side (p.6, line 15; 13-Fig. 2) and an oppositely facing second side (p. 6, line 15, 15-Fig. 3);

a first portion (p.6, line 16; 23-FIG. 2);

a middle portion (p.6, line 17; 25-FIG. 2); and

a third portion (p.6, line 18; 26-FIG. 2), the middle portion (p.6, line 17; 25-FIG. 2) connected to the first portion (p.6, line 16; 23-FIG. 2) along a fold line (p.6, lines 16-17; 21-FIGS. 2 and 3) and the third portion (p.6, line 18; 26-FIG. 2) connected to the middle portion

(p.6, line 17; 25-FIG. 2) along a fold line (p.6, lines 17-19; 21-FIGS. 2 and 3).

Independent claim 32 is directed to the insert and housing.

32. An insect control product (p. 11, line 14, 10-FIGS. 1 and 8) comprising:

an insert (p.6, line 13, 12-FIG. 2-4, 7,8) comprising a first side (p.6, line 15; 13-Fig. 2) and an oppositely facing second side (p. 6, line 15, 15-Fig. 3) and having a first portion (p.6, line 16; 23-FIG. 2), a middle portion (p.6, line 17; 25-FIG. 2) and a second portion (26-FIG. 3) wherein the first portion (p.6, line 16; 23-FIG. 2) is joined to the middle portion (p.6, line 17; 25-FIG. 2) along a fold line (p.6, lines 16-17; 21-FIGS. 2 and 3) and the second portion (26-FIG. 3) is joined to the middle portion (p.6, line 17; 25-FIG. 2) along a fold line (p.6, lines 16-17; 21-FIGS. 2 and 3) such that the middle portion (p.6, line 17; 25-FIG. 2) is positioned between the first (p.6, line 16; 23-FIG. 2) and second portions (26-FIG. 3);

a formula (p. 7, line 12, 300-FIG. 2) applied on a coated region (p. 9, line 4, 19-FIG. 2) of the first side (p.6, line 15; 13-FIG. 2) leaving the first portion (p.6, line 16; 23-FIG. 2) of the first side (p.6, line 15; 13-Fig. 2) noncoated and the formula (p.7, line 12, 300-FIG. 3) applied on the second side (p.6, line 15, 15-Fig. 3) leaving the third portion (p.7, lines 20-24; 26-FIG. 3) of the second side (p. 6, line 15, 15-Fig. 3) noncoated;

a housing (p. 11, line 13, 14-FIG. 8) comprising opposed panels (p. 17, line 25 and page 18, line 9; 106,110-FIGS. 7 and 8) and an interior surface (p. 16, line 25, 104-FIG. 8) and an exterior surface (p. 11, line 24, 102-FIG. 7) and defining an interior that is empty;

the insert (p.6, line 13, 12-FIG. 2-4, 7,8) folded along the fold lines (p.6, lines 16-17; 21-FIGS. 2 and 3) so that it has a Z-shaped cross section (p. 11, line 30 and continuing onto p. 12, line 1; 12-FIGS. 4 and 8) and the insert (p.6, line 13, 12-FIG. 2-4, 7,8) is introduced into empty interior of the housing (p. 11, line 13, 14-FIG. 8) such that the entire area of the noncoated portion of the first side (p.6, line 15; 13-FIG. 2) abuts one of the panels and the entire area of the noncoated portion of the second side ((p. 6, line 15, 15-Fig. 3) abuts the other panel (p. 17, line 25 and page 18, line 9; 106,110-FIGS. 7 and 8); and

the insert (p.6, line 13, 12-FIG. 2-4, 7,8) has a natural spring constant such that after the housing (p. 11, line 13, 14-FIG. 8) is compressed the noncoated portions of the first (p.6, line 15; 13-Fig. 2) and second sides (p. 6, line 15, 15-Fig. 3) are capable of forcing on the opposed panels (p. 17, line 25 and page 18, line 9;106,110-FIGS. 7 and 8) to move the housing (p. 11, line 13, 14-FIG. 8) back to its pre-compressed shape.

Independent claim 35 is directed to the insect control product with insert.

35. An insect control product (p. 11, line 14, 10-FIGS. 1 and 8) comprising:

a) an insert (p.6, line 13, 12-FIG. 2-4, 7,8) comprising: a first side (p.6, line 15; 13-Fig. 2) and an oppositely facing second side (p. 6, line 15, 15-Fig. 3); a first portion (p.6, line 16; 23-FIG. 2), a middle portion (p.6, line 17; 25-FIG. 2); a third portion(p.6, line 18; 26-FIG. 2), the middle portion (p.6, line 17; 25-FIG. 2) connected to the first portion (p.6, line 16; 23-FIG. 2) and the third portion (p.6, line 18; 26-FIG. 2) along a fold lines (p.6, lines 17-19; 21-FIGS. 2 and 3),

b) a formula (p. 7, line 12, 300-FIG. 2), the formula (p. 7, line 12, 300-FIG. 2) applied on a coated region (p. 9, line 4, 19-FIG. 2) of the first side (p.6, line 15; 13-FIG. 2) leaving a noncoated portion of the first side (p.6, line 15; 13-FIG. 2), and the formula (p. 7, line 12, 300-FIG. 2) applied on a coated region (p. 7, lines 20-21, 17-FIG. 3) on the second side (p.6, line 15; 15-FIG. 3) leaving a noncoated portion of the second side (p. 6, line 15, 15-Fig. 3);

c) a box (p. 11, line 13, 14-FIG. 8) comprising an interior surface (p. 16, line 25, 104-FIG. 8) and an exterior surface (p. 11, line 24, 102-FIG. 7), the box (p. 11, line 13, 14-FIG. 8) defining a plurality of holes (p. 17, line 25, 128-FIG 7) for insects to enter the box (p. 11, line 13, 14-FIG. 8) and the box (p. 11, line 13, 14-FIG. 8) having a first panel (p. 16, line 31, 106-FIGS. 7 and 8) and an opposed third panel (p. 16, line 31, 110-FIGS. 7 and 8); and

d) the insert (p.6, line 13, 12-FIG. 2-4, 7,8) folded to comprise a Z-shaped cross section (p. 11, line 30 and continuing onto p. 12, line 1; 12-FIGS. 4 and 8), and moved into the box (p. 11, line 13, 14-FIG. 8) and the middle portion (p.6, line 17; 25-FIG. 2) extends between the

opposed first panel (p. 16, line 31, 106-FIGS. 7 and 8) and third panel (p. 16, line 31, 110-FIGS. 7 and 8) such that the entire noncoated portion of the first side (p.6, line 15; 13-Fig. 2) extends along and forces against the first panel (p. 16, line 31, 106-FIGS. 7 and 8) and the entire noncoated portion of the second side (p.6, line 15; 15-FIG. 3) extends along and forces against the third panel (p. 16, line 31, 110-FIGS. 7 and 8).

VII. Grounds of Rejection to be Reviewed on Appeal.

1. Whether claims 1-3 and 6-8 are anticipated under 35 U.S.C. §102(b) by United States Patent Number 5,042,194 to Cohen.

2. Whether claims 1, 24 and 31 are anticipated under 35 U.S.C. §102(b) by United States Patent Number 5,438,792 to Monett et al.

3. Whether claims 4-5, 9 and 10 are unpatentable under 35 U.S.C. §103(a) over United States Patent Number 5,042,194 to Cohen.

4. Whether claims 25-26 and 32-35 are unpatentable under 35 U.S.C. §103(a) over United States Patent Number 5,438,792 to Monett et al.

VIII.

Argument

A. Rejection under 35 U.S.C. §102(b) over U.S. Patent No. 5,042,194 to Cohen

Claim 1

Claim 1 was rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5,042,194 to Cohen (hereinafter Cohen '194). The Cohen '194 reference discloses a paperboard blank 10 having 6 (six) principal panels. As shown in FIG. 1, there is the unfolded blank 10 and six panels including first and second interior divider panels 12, 14, respectively, and first, second, third, and fourth outer wall panels 16, 18, 20, 22, respectively. The panels are joined and there is scoring 13, 15, 17, 19, and 21 between the divider panels and outer wall panels. FIG. 1 shows that the first interior divider panel 12 is joined to the first outer wall panel 16, and the first outer wall panel 16 is joined to the second outer wall panel 18, and the second outer wall panel 18 is joined to the third outer wall panel 20, and the third outer wall panel 20 is joined to the fourth outer wall panel 22, and the fourth outer wall panel 22 is joined to the second divider panel 14. Thus, as shown in FIG. 1, the divider panels 12, 14, respectively, and the first, second, third and fourth outer walls 15, 18, 20 and 22, respectively, are a one piece construction, with scoring 13, 15, 17, 19 and 21 where they meet.

The divider panel 12 has a tab 42 that is receivable in a slit 44 formed between the outer wall panels 18, 20, respectively. The first outer wall panel 16 has tabs 28, 32, respectively, the third outer wall 20 has tabs 30, 34, respectively, the second outer wall 18 has end enclosure 24, 26, respectively, and the fourth outer wall 22 has end enclosure 36, 38, respectively.

The surface of the blank 10 that forms the interior surface of the trap is treated with an insecticide 70, as shown in FIG. 1. The blank 10 is assembled into the trap by folding divider panel 12, such that the tab 42 moves into the slit 44. The other divider panel 14 is similarly folded inwardly to thus form a rectangular shaped enclosure 25 in which the first and second interior divider panels 12, 14, respectively, are positioned. An adhesive is applied to the back side of divider panel 12 and second divider panel 14 is folded over, so the back of panel 14 contacts the adhesive on panel 12. The tabs are then folded inward.

In the Final Office Action the Examiner, when he rejected claims 1-3, 6-8, indicated that Cohen '194 discloses:

“a first side which is the side facing up and an oppositely facing second side which is the side facing down. Cohen shows the first side having a first portion 12, a middle portion 18 and a third portion 22 with the middle portion being connected to the first portion along a fold line 13 and the third portion connected to the middle portion along a fold line 17 . . . Cohen shows a Z-shaped insert when folded.” (Final Office Action dated July 26, 2005, page 2, paragraph 2).

It is well established law that anticipation under 35 U.S.C. § 102(b) requires that “the invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.” *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001).

Cohen '194 does not disclose each element in claim 1 as arranged in the claim. In particular, independent claim 1 recites “a first side and an oppositely facing second side, a first portion, a middle portion and a third portion, the middle portion connected to the first portion along a fold line and the third portion connected to the middle portion along a fold line.” The structure disclosed in Cohen '194 is significantly different, as shown in FIG. 1 of Cohen '194. Cohen '194 has, as viewed from left to right in FIG. 1 of that reference, six panels that are joined to form one piece, including a divider panel 12, a first outer wall 16, a second outer wall 18, a third outer wall 20, a fourth outer wall 22 and a second divider panel 17, and scoring 13, 15, 17, 19 and 21 is provided for between these panels. The Examiner improperly eliminated structure from Cohen '194 to reach the conclusion of anticipation. In particular, the first outer wall panel 16 and fold line 13, and the third outer wall panel 20 and fold line 19, were eliminated from Cohen '194 to reach the conclusion of anticipation.

Elimination of structure to reach a conclusion of anticipation and deny patentability of the claimed invention is contrary to the long standing law that requires for there to be anticipation, the cited reference must disclose the claim elements, as arranged in the claim.

Karsten Manufacturing Corporation v. Cleveland Golf Company, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001).

In addition, appellant points out that contrary to the Examiner's indication that Cohen '194 is an insert, Cohen '194 cannot reasonable be deemed an insert, because nothing in Cohen '194 discloses an insert, and nothing in Cohen '194 functions as an insert, and nothing disclosed in Cohen '194 is inserted into another structure.

Therefore, because structure was eliminated from Cohen '194 to reach the conclusion of anticipation, and because Cohen '194 does not disclose the claim elements as arranged in the claim, and because Cohen '194 does not disclose an insert, the rejection of claim 1 must be reversed.

Claim 2

Claim 2 was rejected under 35 U.S.C. §102(b) as being anticipated by Cohen '194. Dependent claim 2 calls for a "formula applied on a coated region of the first side and the formula applied on a coated region of the second side." Cohen '194 discloses the "surface of the blank which will form the interior walls of the trap is treated with appropriate insecticide (FIGS. 1 and 2." (Cohen 194', Col. 3, lines 66-68). Nowhere does Cohen '194 disclose the claimed formula applied on the first side and the second side, as claimed. Therefore, because Cohen '194 does not disclose the claimed formula applied on the first side and the second side it does not anticipate claim 2. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of claim 2 on the grounds of anticipation must be reversed.

Claim 3

Claim 3 depends from claim 2 and was rejected under 35 U.S.C. §102(b) as being anticipated by Cohen '194. Claim 3 calls for a formula applied on the first and second sides to be an insecticide. Cohen 194. nowhere discloses a formula applied on first and second sides as claimed that is an insecticide. Rather, Cohen '194 discloses the "surface of the blank which will form the interior walls of the trap is treated with appropriate insecticide (FIGS. 1 and 2." (Cohen '194, Col. 3, lines 66-68). Therefore, because Cohen '194 does not disclose an insecticide applied on the first and second sides of the claimed insert, it does not anticipate claim 3. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242

F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of claim 3 on the grounds of anticipation must be reversed.

Claim 6

Claim 6 depends from independent claim 1 and calls for the insert to be foldable along the fold lines into a Z-shaped configuration. Cohen '194 discloses a folded box that has what are called "divider panels." There is no structure disclosed in Cohen '194 having the claimed "Z-shaped configuration". In addition, the Examiner indicated that Cohen shows a Z-shaped insert when folded. (Office Action dated July 26, page 2, paragraph 2). Cohen '194 does not disclose an insert, but rather discloses a folded blank that is folded along fold lines. Indeed, nothing in the disclosure of Cohen '194 refers to an insert, and the word insert implies that something is being inserted or introduced into something, but Cohen 194' does not disclose anything being inserted. Therefore, because Cohen '194 does not disclose the claimed Z-shaped configuration, and because the Cohen '194 structure is not an insert, it does not anticipate claim 6. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of claim 6 on the grounds of anticipation must be reversed.

Claim 7

Claim 7 recites an "insect control product according to claim 4 folded along the fold lines into a folded insert having a Z-shape cross section such that after folding, the coated middle portion and the coated part of the third portion of the first side face one another." Nowhere does Cohen '194 disclose this claimed structure. Therefore, because Cohen '194 does not disclose the above-recited structure it does not anticipate claim 7. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of dependent claim 7 on the grounds of anticipation must be reversed.

Claim 8

Claim 8 depends from claim 5, which recites a "coated region on the second side covers the middle portion to form a coated middle portion and covers a coated part of the first portion and wherein the third portion of the second side is noncoated," and claim 8 recites, in part, "insert . . . folded along the fold lines into a folded insert having a Z-shape

cross section such that after folding, the coated middle portion and the coated part of the first portion of the second side face one another.” This claimed structure for an insert is not disclosed in Cohen ‘194, because Cohen ‘194 only discloses a coated interior surface. Therefore, because Cohen ‘194 does not disclose this claimed structure it does not anticipate claim 8. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of claim 8 on the grounds of anticipation must be reversed.

B. Rejection under 35 U.S.C. §102(b) over U.S. Patent No. 5,438,792 to Monett et al.

Claim 1

Independent claim 1 was rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,438,792 to Monett et al. (hereinafter Monett et al. ‘792). Monett et al. ‘792 disclose an enclosure 40 formed from a blank. There is a folded composite planar sheet 30 having sections 15 having openings and 14, 16, and the composite planar sheet 30 is folded along fold lines A-A’, B-B’, C-C’, D-D’, and E-E’. An upper sheet member 12 and a lower sheet member 12’, with an adhesive sheet 20 positioned or sandwiched between them, are brought together to form the triple-layered composite sheet 30. The composite planar sheet 30 is folded and is located within the enclosure 40. The Examiner deemed the upper sheet member 12 to be an insert.

To be anticipated, “the invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.” *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Monett et al. ‘792 do not disclose the identical structure recited in independent claim 1, but rather discloses an entirely different structure. Indeed, nowhere do Monett et al. ‘792 disclose that the upper sheet 12 is, by itself, an insert, and nowhere do Monett et al. ‘792 disclose the use of the upper sheet 12 by itself as an insert as concluded by the Examiner. Rather, Monett et al. ‘792 disclose that an upper sheet, lower sheet and adhesive sheet sandwiched in between the upper and lower sheets forms a composite sheet, and this composite sheet can then be placed in the enclosure. Thus, Monett et

al. '792 disclose a triple layered structure can be placed in an enclosure, but nowhere discloses "an insert 12" as indicated by the Examiner. (Office Action dated July 26, 2005, page 2 paragraph 3) The Examiner improperly dissected the composite planar sheet 30 to reach the conclusion of anticipation. Therefore, anticipation rejection of claim 1 must be reversed.

Claim 24

Independent claim 24 was rejected under 35 USC §102(b) as being anticipated by Monett et al. Independent claim 24 recites in part "a formula, the formula applied on a coated region of the first side . . . the formula applied on a coated region on the second side . . . and the insert folded into a Z-shape cross section." To be anticipated, "the invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim." *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 1384, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001).

The Examiner indicated the following:

"Monett shows the formula 20 applied to a coated region of the first side leaving a noncoated region or portion of the first side. Monett shows the formula applied to a coated region on the second side leaving a noncoated region or portion of the second side." (Office Action, page 3, paragraph 1)

However, nowhere do Monett et al. '792 disclose the claimed formula applied on a coated region of the first side or a formula applied on a coated region of the second side as claimed. Rather, Monett et al. '792 disclose a film to which adhesive is applied. The adhesive disclosed in Monett et al. '792 is not the same as the claimed formula applied on coated regions of the first and second side.

In addition, the claim specifically calls for the insert to be folded in a "Z-shaped cross section." Nowhere do Monett et al. '792 disclose a Z-shaped cross section, but rather only disclose a "a series of generally V-shaped cross section portions." (Monett et al. '792, Col 3, lines 25-27). The importance of this cannot be overstressed. The claimed Z-shaped cross section of the claimed invention allows the insert to readily collapse when placed in a housing, such that it can be collapsed for shipment in bundles. The Monnet et al. '792 V-shaped cross section portions, however, operate to prevent the box into which it is insert from collapsing when

subjected to loading. Thus, the Examiner mischaracterized Monett et al. when he indicated that Monett et al. '792 discloses an insert folded in a Z-shaped cross section when even the specification of Monett et al. clearly indicates that the insert is folded to have a V-shaped cross section. A V-shaped cross section is not the same as a Z-shaped cross section. Thus, for these reasons the rejection of claim 24 must be reversed.

In addition, assuming the Amendment After Final is entered, then this claim would include the following structure "the formula applied on a coated region of the first side leaving the first portion of the first side noncoated, and the formula applied on a coated region on the second side leaving the third portion of the second side noncoated." This structure is also not disclosed in Monett et al. '792, and this would be another reason that the rejection of claim 24 must be reversed.

Claim 31

Claim 31 was rejected under 35 USC §102(b) as being anticipated by Monett et al. '792. Claim 31 recites, in part, "an unattached insert for introduction into the housing, the insert comprising: a first side and an oppositely facing second side; a first portion; a middle portion; and a third portion, the middle portion connected to the first portion along a fold line and the third portion connected to the middle portion along a fold line."

Monett et al. '792 do not disclose the identical structure recited in independent claim 31, but rather disclose an entirely different structure, because they disclose a triple layered composite planar sheet 30. Indeed, nowhere do Monett et al. '792 disclose that the upper sheet 12 is, by itself, an insert, and nowhere do Monett et al. '792 disclose the use of the upper sheet by itself as an insert. Rather, Monett et al. '792 disclose a triple layered composite sheet having openings 14 that can be fitted into the enclosure 40. This is structurally different from independent claim 1 which does not call for a triple layered composite sheet. Accordingly, because Monett et al. '792 do not disclose the above-described claimed structure it does not anticipate claim 31. *Karsten Manufacturing Corporation v. Cleveland Golf Company*, 242 F.3d 1376, 58 U.S.P.Q.2d 1286 (Fed. Cir. 2001). Accordingly, the rejection of claim 31 on the grounds of anticipation must be reversed.

C. Rejection under 35 U.S.C. §103(a) over U.S. Patent No. 5,042,194 to Cohen.

Claim 4

Claim 4 was rejected on under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,042,194 to Cohen (hereinafter Cohen '194). Dependent claim 4 recites, in part, "wherein the coated region of the first side covers the middle portion to form a coated middle portion and covers a coated part of the third portion and wherein the first portion of the first side is noncoated." The claim specifically recites that the first portion of the first side is noncoated.

Appellant points out that this obviousness based rejection was based only the Cohen 194' reference. However, it is well established law that:

"even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference."
In re Kotzab, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000).

Cohen 194' nowhere teaches or discloses the claimed insert having a coated region with the first portion being noncoated. Rather Cohen '194 teaches "the surface of the blank which will form the interior walls of the trap is treated with an appropriate insecticide 70 (FIGS. 1 and 2)." (Col. 3, lines 66-68). Cohen '194 nowhere teaches that a first portion of the coated region is noncoated. There is no motivation to significantly modify the teachings of Cohen '194, as the Examiner did, to arrive at the conclusion it would have been obvious to leave a first portion of the Cohen '194 blank noncoated. Thus, because there is no motivation to modify Cohen '194 the obviousness based rejection of claim 4 must be reversed.

Claim 5

Claim 5 was rejected on under 35 U.S.C. §103(a) as being unpatentable over Cohen '194. The Examiner rejected claim 5 under 35 U.S.C. §103(a) citing only the Cohen '194 reference. Claim 5 recites, in part, "wherein the coated region of the second side covers the middle portion to form a coated middle portion and covers a coated part of the first portion and wherein the third portion of the second side is noncoated." The claim specifically recites that the third portion of the second side is noncoated.

Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). Cohen 194’ nowhere teaches or discloses the claimed second side being coated with the third portion of the second side being noncoated. Indeed, nowhere does Cohen ‘194 disclose that the second side thereof can be coated. Rather, Cohen ‘194 teaches “the surface of the blank which will form the interior walls of the trap is treated with an appropriate insecticide 70 (FIGS. 1 and 2).” (Col. 3, lines 66-68). There is simply no motivation to significantly modify the teachings of Cohen ‘194, as the Examiner did, to arrive at the conclusion it would have been obvious also coat both sides of the blank. Indeed, if what the Examiner proposes were to be done, the Cohen ‘194 insect trap would have insecticide on its interior and exterior surfaces, which is nowhere suggested in Cohen ‘194.

Thus the rejection of claim 5 must be reversed.

Claim 9

Claim 9 recites, in part, an insert for an insect control product wherein the insert has a “region of the first side covers the middle portion and a coated part of the third portion leaving a non-coated first portion, and wherein the coated region on the second side covers the middle portion and coated part of the first portion leaving a non-coated third portion, and wherein the non-coated portion of the first side and the non-coated portion of the second side each abuts and extends along an interior surface of a box having opposed first and third panels into which the insert is placed such that the insert is capable of being compressed along with the box when a load is applied to the first and third panels and the insert is capable of returning the box to its pre-compressed condition when the load is removed by forcing on the first panel and the third panel.”

Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000).

Cohen ‘194 does not suggest the claimed insert having a first side having a coated regions that covers the middle portion and a coated part of the third portion leaving a non-coated first portion. Cohen ‘194 does not suggest a coated region on the second side that covers the

middle portion and coated part of the first portion leaving a non-coated third portion. Cohen '194 does not suggest the claimed non-coated portion of the first side and the non-coated portion of the second side that each abuts and extend along an interior surface of a box having opposed first and third panels into which the insert is placed such that the insert is capable of being compressed along with the box when a load is applied to the first and third panels and the insert is capable of returning the box to its pre-compressed condition when the load is removed by forcing on the first panel and the third panel.

Cohen '194 discloses a blank that is only coated on the "interior walls" (Col. 3, line 67). Indeed Cohen '194 shows no structure nor suggests any structure that is even remotely similar to the insert claimed in claim 9. This is because the structure of Cohen '194 is not an insert at all, but is rather a folded body that is folded along fold lines. Nothing in 'Cohen 194 functions as an insert, and nothing in Cohen '194 is at any time inserted into another object. Thus, any characterization that the folded panels of Cohen '194 are an insert is greatly inaccurate.

Accordingly, because there is no basis to support the obviousness based rejection of claim 9, the rejection of claim 9 must be reversed.

Claim 10

Claim 10 recites:

"The insert for an insect control product according to claim 1 wherein the first portion comprises opposed first tabs and the third portion comprises opposed second tabs and wherein the first and second tabs for being received in a conveyor."

The Examiner indicated "Cohen '194 shows the first portion having a first tab 42 and the third portion having second tabs 36, 38 . . . it would have been obvious to provide the first portion with more than one tab for multiplied effect." (Office Action dated July 26, 2005, p. 4, paragraph 1).

Cohen '194, however, nowhere suggests the claimed opposed tabs. Rather, Cohen '194 describes tab 42 as an assembly tab, and an "end-closure" 36, 38. (Cohen '194, Col. 3, lines 59). The claim specifically call for opposed first and second tabs. Cohen '194 shows tab 42 is at a right angle to the end closure 36, 38 that is formed from two pieces. Under no reading of the Cohen '194 can elements 42 and 36, 38 be considered the claimed opposed tabs, especially in

view of FIG. 1 of Cohen '194 that clearly shows that they are not opposed tabs, but rather at right angles to one another.

In addition, in support of his position, the Examiner cited *In re Harza*. *In re Harza*, 274 F.2d 669, 124 U.S.P.Q. 378 (C.C.P.A. 1960). In that case, the Court indicated that a duplication of parts is not patentable. *In re Harza*, 274 F.2d 669, 671, 124 U.S.P.Q. 378 (C.C.P.A. 1960). That case is distinguished, because claim 10 does not claim a mere duplication of parts, but rather claims structure that has first, middle and third portions joined together and having opposed tabs on the first portion and the third portion for being received in a conveyor. Nowhere is a duplication of parts claimed, and thus *In re Harza* is distinguished. *In re Harza*, 274 F.2d 669, 671, 124 U.S.P.Q. 378 (C.C.P.A. 1960).

Therefore, the rejection of claim 10 must be reversed.

D. Rejection under 35 U.S.C. §103(a) over U.S. Patent No. 5,438,792 to Monett et al.

Claim 25

Claim 25 calls for a coated region of the first side of the insert and calls for a coated region of the second side of the insert wherein the middle portion of each is coated. Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000).

Monett et al. '792 do not suggest or teach that it can be modified such that both sides of the middle portion are coated. In particular, if the proposed modification suggested by the Examiner were to be made, then Monett et al. '792 would not work and would be unsuitable for its intended purpose. This is because Monett et al. '792 discloses that “adhesive sheet member 20 . . . is composed of a film base 24 and upper and lower adhesive surfaces 22 and 26.” (Col. 3, lines 53-55). The Examiner proposes making the entire middle of the structure of Monett et al. '792 coated to arrive at applicants claimed invention. This would not work, because the entire structure of Monett et al. '792 would collapse in on itself, as there would be no structure to support the adhesive sheet because it is only a film. Thus, the proposed modification cannot work.

Accordingly, the obviousness based rejection of claim 25 must be reversed.

Claim 26

Claim 26 specifically calls for the formula to be an insecticide so that an insect enters the box and contacts the insecticide exits the box.

Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000).

Monett et al. ‘792 does not suggest the use of the claimed insecticide. Rather, Monett et al. ‘792 teaches an adhesive that the insect contacts and thereafter remains adhered to and dies while adhered to the adhesive. A significant disadvantage of this is that once the insect adheres to the adhesive, the trap cannot capture any additional insects. Thus, this design has a very limited use. The claimed invention, however is significantly different and better, because when the insect enters the insect control product the insect contacts an insecticide and walks out of the insect control product and returns to its nest, where it can advantageously paralyze the entire colony of insects with the residual insecticide on its body. This is superior to what is disclosed in Monett et al. ‘792. Also, Monett et al. ‘792 do not disclose the use of an insecticide. This is because the trap disclosed in Monett et al. ‘792 kills insects by starvation, whereas the claimed invention kills insects by poisoning with a paralytic agent, which is significantly different.

In addition, as a basis for reaching the conclusion of obviousness, the Examiner indicated that “it would have been obvious to employ an old and well known insecticide with an adhesive to kill more insects.” (Office Action dated July 26, 2005, page 4, paragraph 6). This reasoning is not a valid reason to deny the patentability of claim 26, because regardless of whether or not Monett et al. ‘792 is modified to have an insecticide the result is the same, the insect dies in the trap because it is it cannot move due to the adhesive. The fact that there is an insecticide as proposed by the Examiner may hasten death, but the insect remains adhered to the trap and dies. In addition, the Monett et al. trap has the significant disadvantage of effectively preventing other insects from contacting the adhesive and perishing in the trap. Thus, the Examiner’s proposed modification only changes the way the insect dies from death by starvation while adhered to the trap, to death by starvation and poisoning while adhered to the trap. However, nowhere do

Monett et al. disclose that the insect can leave the trap and die outside the trap. Thus, the claimed invention is different from and superior to Monett et al. '792.

Accordingly, obviousness based rejection of claim 10 must be reversed.

Claim 32

The Examiner rejected claim 32 as being obvious in view of Monett et al. '792.

Claim 32 calls for, in part, a housing having opposed panels and an insert folded into a Z-shaped cross section, and the insert introduced into the housing such that the entire noncoated portion of the first side abuts against one of the panels, and the entire noncoated portion of the second side abuts the other panel. In addition, the claim calls for the insert having a spring constant such that after the housing is compressed the first and second sides are capable of forcing the opposed panels to move the housing back to its pre-compressed shape.

Appellant points out that "even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference." *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). Here, there is no suggestion in Monett et al. '792 that it can be modified to arrive at the claimed invention. In particular, Monett et al. '792 disclose the edges of a composite sheet having a V-shape that extends between the top and bottom of an enclosure. This is significantly different than the claimed Z-shape cross section, because the Z-shape cross section can advantageously compress for purposes of packaging bundles of the claimed insect control products, whereas the V-shape composite sheet of Monett et al. '792 works against compression, that is, The V-shape actually provides support to the Monett et al. '792 trap to prevent its collapse. Also, the Examiner indicated that "after the housing is compressed the noncoated sides are capable of forcing on the opposed panels to move the housing back to its pre-compressed state." (Office Action dated July 26, 2006, p. 4, paragraph 6) However, Monett et al. '792 nowhere suggests that the trap disclosed therein can be modified so that it can be compressed. Indeed, compressing Monett et al. '792 trap would destroy the trap, because the adhesive sheet portion of the composite sheet would adhere to itself and would adhere to the upper and lower sheets of the composite sheet that it contacts, thus making it impossible for the insect trap of Monett et al. '792 to ever return to its pre-compressed condition. Thus, the claimed invention is both different and better than what is disclosed in Monett et al. '792.

Accordingly, the obviousness based rejection of claim 32 must be reversed.

Claim 33

Claim 33 calls for introduction of the insert into the insect control production with an insertion machine. Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). Monett et al. ‘792 do not disclose an insertion machine. Thus, because the cited reference does not disclose or suggest the claimed subject matter, the obviousness based rejection of claim 32 must be reversed.

Claim 34

Claim 33 calls for the insert to be stamped from a sheet of material a single layer thick. Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). The composite sheet disclosed in Monett et al. ‘792 comprises three layers and Monett et al. ‘792 only discloses a three layered sheet that is adapted to be housed in the enclosure. Nowhere does Monett et al. ‘792 disclose an insert that is stamped from a sheet of material a single layer thick being introduced into a housing. Accordingly, because the claimed invention is not disclosed in the cited reference, the obviousness based rejection of claim 34 must be reversed.

Claim 35

Claim calls for an insect control product having a first side and an oppositely facing second side, with a middle portion connected between a first portion and a third portion. A formula is applied on a coated region of the first side leaving a noncoated portion of the first side, and a formula applied to a coated region of the second side leaving a noncoated portion. The insert is folded into a Z-shaped cross section and introduced into a box having an interior surface, such that the middle portion extends between opposed first and third panels of the box, such that the entire noncoated portion of the first side extends along and forces against the first

panel and the entire noncoated portion of the second side extends along and forces against the third panel.

Appellant points out that “even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.” *In re Kotzab*, 717 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). There is no suggestion in Monett et al. ‘792 that it can be modified to arrive at the structure recited in claim 35. In particular, Monett et al. ‘792 nowhere disclose an insert folded into a Z-shaped configuration that forces against opposed panels of the box, such that only noncoated portions of the first and second sides of the insert extend along and force against the opposed panels as claimed. This claimed structure is significantly different than Monett et al. ‘792 which does not disclose the claimed Z-shaped. The claimed Z-shaped cross section advantageously provides a way for only the noncoated portions of the first and second side of the insert to force against the first and third panels of the box, while at the same time the coated regions of the first and second sides of the insert are advantageously exposed, so that insects can contact the formula on the coated regions of the insert. This arrangement advantageously provides for maximum exposure of formula, and eliminates the waste of formula on portions of the insert that contact the first and third panels of the box. Nowhere do Monett et al. ‘792 disclose this unique arrangement, and nowhere do Monett et al. ‘792 suggest that it can be modified to provide for such an advantageous structural configuration. Monett et al. ‘792 only suggests adhesive areas for capturing insects. Thus, the structure claimed in claim 35 is not disclosed or suggested by Monett et al. ‘792.

In addition, Monett et al. ‘792 disclose the edges of a composite sheet having a V-shape that extends between the top and bottom of an enclosure. This is significantly different than the claimed Z-shape cross section, because the Z-shape cross section can advantageously compress for purposes of packaging bundles of the claimed insect control products, whereas the V-shape composite sheet of Monett et al. ‘792 works against compression, that is, it acts as an internal support and prevents the collapse of Monett et al. ‘792. Also, the Examiner indicated that “after the housing is compressed the noncoated sides are capable of forcing on the opposed panels to move the housing back to its pre-compressed state.” (Office Action dated July 26, 2006, p. 4, paragraph 6). However, Monett et al. ‘792 nowhere suggests that the insect trap disclosed therein can be modified so that it can be compressed. Indeed, compressing Monett et al. would

destroy the trap, because the adhesive sheet portion of the composite sheet would adhere to itself and would adhere to the upper and lower sheets of the composite sheet, thus making it impossible for the insect trap of Monett et al. '792 to ever return to its pre-compressed condition. Thus, the claimed invention is both different and better than what is disclosed in Monett et al.

Accordingly, the obviousness based rejection of claim 35 must be reversed.

1. (rejected) An insert for an insect control product comprising:
 - a) a first side and an oppositely facing second side;
 - b) a first portion;
 - c) a middle portion; and
 - d) a third portion, the middle portion connected to the first portion along a fold line and the third portion connected to the middle portion along a fold line.
2. (rejected) An insert for an insect control product according to claim 1 further comprising a formula, the formula applied on a coated region of the first side and the formula applied on a coated region of the second side.
3. (rejected) An insert for an insect control product according to claim 2 wherein the formula further comprises an insecticide.
4. (rejected) The insert for an insect control product according to claim 2 wherein the coated region of the first side covers the middle portion to form a coated middle portion and covers a coated part of the third portion and wherein the first portion of the first side is noncoated.
5. (rejected) The insert for an insect control product according to claim 2 wherein the coated region on the second side covers the middle portion to form a coated middle portion and covers a

coated part of the first portion and wherein the third portion of the second side is noncoated.

6. (rejected) The insert for an insect control product according to claim 1 wherein the insert is foldable along the fold lines into a folded insert comprising a Z-shaped configuration.

7. (rejected) The insert for an insect control product according to claim 4 folded along the fold lines into a folded insert having a Z-shape cross section such that after folding, the coated middle portion and the coated part of the third portion of the first side face one another.

8. (rejected) The insert for an insect control product according to claim 5 folded along the fold lines into a folded insert having a Z-shape cross section such that after folding, the coated middle portion and the coated part of the first portion of the second side face one another.

9. (rejected) The insert for an insect control product according to claim 2 wherein the coated region of the first side covers the middle portion and a coated part of the third portion leaving a non-coated first portion, and wherein the coated region on the second side covers the middle portion and coated part of the first portion leaving a non-coated third portion, and wherein the non-coated portion of the first side and the non-coated portion of the second side each abuts and extends along an interior surface of a box having opposed first and third panels into which the insert is placed such that the insert is capable of being compressed along with the box when a load is applied to the first and third panels and the insert is capable of returning the box to its pre-compressed condition when the load is removed by forcing on the first panel and the third panel.

10. (rejected) The insert for an insect control product according to claim 1 wherein the first portion comprises opposed first tabs and the third portion comprises opposed second tabs and wherein the first and second tabs for being received in a conveyor.

11. (withdrawn) A method of making an insert for a control product comprising the steps of:

a) providing a stamped insert comprising a first portion, a middle portion, and a third portion;

b) providing fold lines between the first portion and middle portion, and providing fold lines between the between the middle portion and the third portion;

c) providing a formula;

d) providing the insert with a first side and a second side; and

e) applying the formula on a coated region of the second side and drying the formula, and applying the formula on a coated region on the first side and drying the formula.

12. (withdrawn) The method of making an insert for a control product according to claim 11 wherein the coated region on the second side of the insert comprises the middle portion and a portion of the first portion.

13. (withdrawn) The method of making an insert for a control product according to claim 11 wherein the coated region on the first side comprises the middle portion and a portion of the third portion.

14. (withdrawn) The method of making an insert for a control product according to claim 11

comprising the step of folding the insert in upon itself along the fold lines so that the insert comprises a Z-shaped cross section.

15. (withdrawn) The method of making an insert for a control product according to claim 11 comprising the steps of folding the coated middle portion and the coated part of the third portion of the first side towards one another, and folding the coated middle portion and the coated part of the first portion of the second side towards another, to provide the insert with a Z-shaped cross section.

16. (withdrawn) The method of making an insert for a control product according to claim 11 comprising the further steps of providing first tabs extending from the first portion and providing second tabs extending from the third portion, and holding the inserts by the first tabs and second tabs.

17. (withdrawn) A method of making an insect control product comprising the steps of:

- a) stamping the insert from a paper blank comprising a first side and a second side;
- b) stamping perforated fold lines in the blank between a first portion and a middle portion, and between the middle portion and a third portion;
- c) transporting the insert to a first coating machine and coating a coated region of the second side with a formula;
- d) flipping the insert so the second side goes from facing a downward direction to facing an upward direction;
- e) transporting the insert to a first drying tunnel and drying the formula on the coated

region of the second side;

f) transporting the insert to a second coating machine and coating a coated region of the first side with formula;

g) flipping the insert so the first side goes from facing a downward direction to facing an upward direction;

h) transporting the insert to a second drying tunnel and drying the formula on the coated region of the first side of the insert;

i) transporting the insert to a folding machine for folding the insert along fold lines so the insert takes on a Z-shaped cross section; and

j) transporting the insert to an insertion machine and inserting the insert into a box to provide an insect control product.

18. (withdrawn) A method of making an insect control product according to claim 17 comprising the further steps of and leaving a noncoated region on the second side of the insert, so that the coated region of the second side comprises all of the middle section and a portion of the third portion.

19. (withdrawn) A method of making an insect control product according to claim 17 comprising the further steps of leaving a noncoated region on the first side, so that the coated region comprising all of the middle section and a portion of the third portion.

20. (withdrawn) The method for making an insert for an insect control product box according to claim 19 further comprising the steps of

- a) providing the insect control product box with an interior side; and
- b) wherein after the step of inserting the insert into the insect control product box only the noncoated regions of the insert contact the interior side of the insect control product box.

21. (withdrawn) The method for making an insert for an insect control product box according to claim 19 further comprising the steps of:

- a) providing an assembly line and conveyors for transporting the inserts; and
- b) providing the insert with first tabs extending from the first portion, and providing the insert with second tabs extending from the third portion, the conveyor for holding the inserts by the first tabs and the second tabs so that the coated region of the first side and the coated region of the second side do not contact the assembly line.

22. (withdrawn) The method for making an insert for an insect control product box according to claim 19 further comprising the steps of:

- a) providing a vacuum in the folding machine to suction in any particles of insecticide that break off during the folding process; and
- b) passing the drawn in particles through a bath so that the particles settle to the bottom of the bath.

23. (withdrawn) The method for making an insert for an insect control product box according to claim 17 further comprising the steps of:

- a) providing a carton insertion machine for moving the boxes into cartons;
- b) transporting the carton to a film wrap and sealing machine;

c) wrapping film around the carton in the film wrap and sealing machine resulting in film cover cartons;

d) transporting the film covered carton on a conveyor and to a film shrink tunnel;

e) shrinking the film on the carton; and

f) transporting the film covered cartons to a dispatch conveyor.

24. (rejected) An insect control product comprising:

a) an insert comprising: a first side and an oppositely facing second side, a first portion, a middle portion, a third portion, the middle portion connected to the first portion and the third portion along fold lines;

b) a formula, the formula applied on a coated region of the first side leaving the third portion of the first side noncoated, and the formula applied on a coated region on the second side leaving the third portion of the second side noncoated;

c) a box comprising an interior surface and an exterior surface, the box defining a plurality of holes for insects to enter the box; and

d) the insert folded to comprise a Z-shaped cross section, and the insert positioned in the box such that only the noncoated portion of the first side and the noncoated portion of the second side contact the interior surface of the box.

25. (rejected) The insect control product according to claim 24 wherein the coated region of the first side covers the middle portion and a coated part of the third portion, and wherein the coated region on the second side covers the middle portion and a coated part of the first portion.

26. (rejected) The insect control product according to claim 24 wherein the formula comprises an insecticide so that an insect enters the insect box and contacts the insecticide and then exits the box to die at a location outside the box.

27. (withdrawn) An assembly line for assembling inserts and housings into insect control products comprising:

a) the insert comprising a first side and a second side, and a first portion and middle portion connected along fold lines, and a third portion connected to the middle portion along fold lines;

b) a first feed mechanism for feeding an insert to a first coating machine by a conveyor, the first coating machine for coating a coated region of the second side of the insert, which faces in a downward direction, with a formula;

c) a conveyor for moving the insert to a first flip mechanism for flipping the insert so the coated region of the second side of the insert faces in an upward direction;

d) a conveyor for moving the insert to a first drying tunnel for drying the formula on the second side of the insert;

e) a conveyor for moving the insert to a second coating machine for coating a coated region of the first side of the insert, which faces in a downward direction, with formula;

f) a conveyor for moving the insert to a second flip mechanism for flipping the insert so the coated region of the first side of the insert faces in an upward direction; and

g) a conveyor for moving the insert to a second drying tunnel for drying the formula on the first side of the insert.

28. (withdrawn) An assembly line for assembling inserts and housings into insect control products according to claim 27 further comprising:

a) a conveyor for moving the insert to a folding machine for folding the insert along the fold lines into a Z-shaped configuration, so that the insert may be received in a housing.

b) a conveyor for moving the insert to an insertion machine for taking the folded insert and placing it in the box and completing assembly of the insect control product;

c) a conveyor for moving the insect control product to a carton insertion machine for moving a plurality of insect control products into a carton; and

d) a conveyor for moving the carton to a film wrap and sealing machine for wrapping the cartons in a shrink wrap, and a conveyor for moving the cartons to a film shrink tunnel for shrinking the wrap tightly on the cartons.

29. (withdrawn) An assembly line for assembling insect control products according to claim 27 further comprising a particle recovery system for removing particles of formula from the folding machine.

30. (withdrawn) An assembly line for assembling insect control products according to claim 27 wherein the first and second coating machines each further comprise a first cylinder positioned above a second cylinder, the first and second cylinders for spinning and drawing the insert between them, and wherein the second cylinder comprises a rectangular area for applying formula to the insert passing over the second cylinder.

31. (rejected) An insect control product having a housing and an unattached insert for

introduction into the housing, the insert comprising:

a first side and an oppositely facing second side;

a first portion;

a middle portion; and

a third portion, the middle portion connected to the first portion along a fold line and the third portion connected to the middle portion along a fold line.

32. (rejected) An insect control product comprising:

an insert comprising a first side and an oppositely facing second side and having a first portion, a middle portion and a second portion wherein the first portion is joined to the middle portion along a fold line and the second portion is joined to the middle portion along a fold line such that the middle portion is positioned between the first and second portions;

a formula applied on a coated region of the first side leaving the first portion of the first side noncoated and the formula applied on the second side leaving the third portion of the second side noncoated;

a housing comprising opposed panels and an interior surface and an exterior surface and defining an interior that is empty;

the insert folded along the fold lines so that it has a Z-shaped cross section and the insert is introduced into empty interior of the housing such that the entire area of the noncoated portion of the first side abuts one of the panels and the entire area of the noncoated portion of the second side abuts the other panel; and

the insert has a natural spring constant such that after the housing is compressed the noncoated portions of the first and second sides are capable of forcing on the opposed panels to

move the housing back to its pre-compressed shape.

33. (rejected) The insect control product of claim 32 wherein the insert is mechanically introduced into the housing by an insertion machine that automatically introduces the insert in the housing.

34. (rejection) The insect control product according to claim 32 wherein the insert is stamped from a sheet of material a single layer thick.

35 (rejected) An insect control product comprising:

- a) an insert comprising: a first side and an oppositely facing second side; a first portion, a middle portion; a third portion, the middle portion connected to the first portion and to the third portion along fold lines;

- b) a formula, the formula applied on a coated region of the first side leaving a noncoated portion of the first side, and the formula applied on a coated region on the second side leaving a noncoated portion of the second side;

- c) a box comprising an interior surface and an exterior surface, the box defining a plurality of holes for insects to enter the box and the box having a first panel and an opposed third panel; and

- d) the insert folded to comprise a Z-shaped cross section and moved into the box and the middle portion extends between the opposed first panel and third panel such that the entire noncoated portion of the first side extends along and forces against the first panel and the entire noncoated portion of the second side extends along and forces against the third panel.

X. Evidence appendix.

None.

XI. Related Proceedings Appendix.


None.

XII. CONCLUSION

The Board is respectfully requested to reverse the 35 USC 102 and 35 USC 103 rejections of record, for the reasons set forth above, and find that claims 1-10, 24-26, and 31-35 define patentable subject matter over the art of record.

Respectfully submitted,

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Dated: April 24, 2006

030449/00003 BFLODOCS 1526605v1